S.B.Civil Writ Petition NO.143/2004

Mohan lal

vs

Nagaram & Ors.

DATE OF ORDER : - 4.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Jaswantmal Bhandari, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 19th Sept., 2003 as well as against the order dated 15th July, 2003. By the order dated 15th July, 2003, the trial court closed the cross-examination of PW-5 Moolchand. By order dated 19th Sept., 2003, the court rejected the application of the defendant seeking permission to cross-examine the plaintiff's witness PW-5 Moolchand.

According to learned counsel for the petitioner, the case was fixed for the evidence of the plaintiff and plaintiff examined his witness PW-5 Moolchand. At that time, the counsel for the defendant was busy in another court and before the counsel could reach to cross-examine the plaintiff's witness, the court passed the order of closure of right of the defendant to cross-examine the plaintiff's witness. According to

learned counsel for the petitioner, the counsel for the defendant reached in the court at about 12.30 PM. The plaintiff also submitted the application on the same day, i.e., on 15th July, 2003 alongwith the affidavit of the defendant. Despite this fact, the court after observing that the counsel was busy in another court, cannot be a ground for adjourning the case rejected the petitioner's application for permitting the petitioner to cross-examine the witness.

After going through the facts of the case and the reasons given by the trial court, this Court is of the firm opinion that the trial court has committed serious error in closing the right of the defendant to cross-examine the witness PW-5 Moolchand and further committed serious error of law in rejecting the application of the petitioner filed on the same day for permitting the petitioner to cross-examine the plaintiff's witness PW-5 Moolchand because the trial court should not have closed the evidence in such hot haste.

Hence, the writ petition of the petitioner is allowed and the orders of the trial court dated 15th July, 2003 and 19th Sept., 2003 are set aside. The defendant may cross-examine the plaintiff's witness PW-5 on the date fixed by the trial court. On that day, the plaintiff shall keep PW-5 Moolchand ready for cross-examination and in case there is difficulty in producing the witness by the plaintiff, the court may, by

the process of the court, summon the witness for cross-examination.

(Prakash Tatia), J.

c.p.goyal/-